

FILED

AUG 19 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 313948

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

ARTHUR GRESH,

Appellant,

v.

OKANOGAN COUNTY AND MAZAMA PROPERTIES, LLC,

Respondents.

**RESPONDENT MAZAMA PROPERTIES, LLC'S REPLY TO
DEPARTMENT OF ECOLOGY'S AMICUS CURIAE BRIEF**

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Respondent Mazama Properties, LLC (“Mazama Properties”) agrees with the Department of Ecology that the decision below should be affirmed. The Department presents a compelling case for allowing a well originally drilled for one authorized use to be employed for another authorized use. *See* Dep’t of Ecology’s Amicus Curiae Br. (“Brief”) at 14-18. The text, history, and purpose of RCW 90.44.050 support that conclusion, and neither *Department of Ecology v. Campbell & Gwinn*, 146 Wn.2d 1, 43 P.3d 4 (2012) nor *Five Corner Family Farmers v. State*, 173 Wn.2d 296, 286 P.3d 892 (2011) counsels to the contrary. Brief at 14-18.

The Department also succinctly explains why the County was right to decide that Mazama Properties has an adequate water supply. *Id.* at 9. The County ensured that the entire project would collectively use no more than 5,000 gallons of water per day, just as RCW 90.44.050 allows. It did so by approving the subdivision on the condition that the plots in Lot 1 be collectively limited to 2,880 gallons per day, just as Lot 1 was limited before it was divided. *Id.* at 11-12. With that condition, the County correctly found an adequate legal water supply as RCW 58.17.110(2) requires.

Mazama Properties writes separately only to note that the Court is not required to reach either of those issues to affirm the decision below. As Mazama Properties explained, this case is untimely. Response Br. at

17-22. The Land Use Petition Act bars any challenge filed more than 21 days after a land use decision. RCW 36.70C.040(2), (3). Petitioner’s central challenge is to the County’s decision to approve the Nordic Village Long Plat. Resp. Br. at 5-10, 17. He did not challenge that decision within 21 days. *Id.* at 9-10. Instead, he challenged a later County decision—which he admits was correct—asking that the earlier decision be reversed. *Id.* at 11-12.

If such a tactic is allowed, the 21-day bar will be largely worthless. The legislature’s goal of “consistent, predictable, and timely judicial review,” RCW 36.70C.010, will be replaced in many cases with haphazard, uncertain, and belated review. Petitioner’s tactic should be rejected and this case dismissed as untimely.

If it is, the Court need not decide the issues addressed in the Department’s brief. *See Wenatchee Sportsmen Ass’n v. Chelan County*, 141 Wn.2d 169, 182, 4 P.3d 123 (2000) (concluding the 21-day bar applied and holding “[w]e do not need to reach the other [Growth Management Act] issues raised by the parties”); *see also James v. County of Kitsap*, 154 Wn.2d 574, 590, 115 P.3d 286 (2005) (“Because we find the Developers’ claims are barred under LUPA, we need not reach the County’s argument that the doctrine of equitable estoppel bars recovery”). The Court would be justified in refusing to reach those issues.

Nevertheless, Mazama Properties believes the clarification requested by the Department is of substantial public interest. Mazama Properties therefore believes the Court should address the Department's issues even if they are moot by reason of petitioner's failure to appeal in a timely fashion.

DATED: August 15, 2013

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CERTIFICATE OF SERVICE

KAREN M. RENTZ certifies and states:

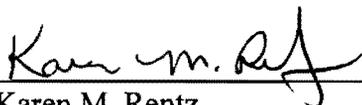
I am a citizen of the United States of America and a resident of the State of Washington; I am over the age of eighteen years; I am not a party to this action; and I am competent to be a witness herein. On August 15, 2013, I caused to be served, a true and correct copy of Respondent Mazama Properties LLC's Reply to Department of Ecology's Amicus Curiae Brief and Certificate of Service upon the following parties via email and via U.S. Mail, first class, postage prepaid as follows:

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DATED at Seattle, Washington this 15th day of August, 2013.



Karen M. Rentz